

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

vs.

PAUL BLAZEIVICH,

Plaintiff,

Defendant.

CASE NO. 99cr471-IEG

Order Denying Petition for a Writ of
Audita Querela; Denying Alternative
Motion to Modify Terminate
Supervised Release and Reduce Fine
[Doc. No. 409]

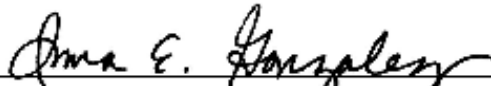
Defendant Paul Blazeovich has filed a petition for a writ of audita querela, or in the alternative for an order terminating supervised release and reducing fine to zero. Defendant argues he has recently come in contact with the individual identified in photographs at trial as "PTPO-H." Defendant states that the individual identified as PTPO-H is willing to come to Court to testify that she was an adult when defendant took the disputed nude photographs of her. Based thereon, defendant moves the court for an order correcting his sentence, reducing his fine to zero, and terminating his supervised release. The government has filed a written response. The Court DENIES defendant's motion.

The issue of PTPO-H's age has been litigated *ad nauseum* in this case. The Ninth Circuit Court of Appeals has rejected his claims related to this issue on at least two occasions, and has denied him leave to file any further motion pursuant to 28 U.S.C. § 2255. [Doc. No. 403, Memorandum Decision filed November 12, 2008.] Petitioner is also precluded from raising his

1 arguments by way of a petition for a writ of audita querela, because the writ is not a proper vehicle
2 to raise challenges to a conviction or sentence even where, as here, defendant is precluded from
3 filing a second or successive motion under § 2255. United States v. Valdez-Pacheco, 237 F.3d
4 1077, 1079-80 (9th Cir. 2001). Rule 36 of the Federal Rules of Criminal Procedure is not
5 applicable here, where defendant asks the Court to reassess the merits of its prior decisions.
6 United States v. Jones, 608 F.2d 386, 389 (9th Cir. 1979) (Rule 36 is intended only to allow
7 correction of clerical errors). Finally, the Court declines to modify or terminate defendant's
8 conditions of supervised under 18 U.S.C. §§ 3563(c) or 3583(e)(1) based upon this purported new
9 evidence. Defendant's motion is DENIED.

10 **IT IS SO ORDERED.**

11 **DATED: April 19, 2010**

12 
13 **IRMA E. GONZALEZ, Chief Judge**
14 **United States District Court**